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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the France Libertes : Fondation Danielle Mitterrand, Advocates for Human Rights, American Association of Jurists, Cultural Survival, Robert F. Kennedy Center for Justice and Human Rights, Society for Threatened Peoples, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Kingdom of Morocco Must Respect and Implement the Rights Protected by the ICESCR in Western Sahara*

Summary

Under international law, the Kingdom of Morocco has no legitimate sovereignty over Western Sahara.[1] Nevertheless, as the *de facto* Occupying Power in a non-self-governing territory, it is clear that the Kingdom of Morocco must respect and implement its human rights obligations in Western Sahara. The Kingdom of Morocco ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979. Yet the Kingdom of Morocco has violated a number of the rights enshrined in the ICESCR, as detailed below.

The Right to Self-Determination (Article 1 (1))

From a legal perspective, the Sahrawi people are clearly entitled to determine their political future through a referendum on self-determination. However, Morocco has been unwilling to resolve the self-determination question in conformity with international law's binding principles. Through the "*Moroccan Extended Autonomy Initiative*," Morocco proposes granting Western Sahara a degree of autonomy. This initiative, however, does not allow the Sahrawi people to choose independence over regional autonomy. Therefore, Morocco's proposal violates the principle of self-determination.

The Right to Freely Dispose of Natural Resources (Article 1(2))

The exploitation of natural resources in a non-self-governing territory must satisfy two conditions to conform to international law. First, the resources must be exploited for the benefit of the peoples in the territory. Second, the resources must be exploited in the name of the peoples or in consultation with their representatives.[2] However, the principle of permanent sovereignty of peoples under foreign occupation over their natural resources[3] is not respected in Western Sahara. Instead, Morocco exploits the territory's phosphates, fisheries, cultivable lands, and water in its own name, without prior consultation with legitimate Sahrawi representatives.

In Western Sahara, natural resources are principally found in the enclave that Morocco occupies, located between the coast and the Moroccan wall. Over 1,500 miles long, the wall is the longest operational military barrier in the world and allows Morocco to control eighty percent of Western Sahara. The wall also creates a physical barrier between the Sahrawi people in the Tindouf refugee camps and their native land's natural resources. Moreover, the landmines located east of the wall prevent the refugee camp population from freely exploiting its resources and livestock.[4]

The Right to Work (Article 6)

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[1] International Court of Justice, Advisory Opinion on Western Sahara, 16 October 1975, http://www.icj-cij.org/docket/files/61/6197.pdf. No state or inter-governmental institution has recognized Morocco as a sovereign power over Western Sahara.

[2] Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, Legal Counsel Hans Corell, addressed to the President of the Security Council, S/2002/161, §24; see also §9. The Legal Service of the European Parliament has also noted, "*compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes.*" Legal Opinion of the Legal Service of the European Parliament, 13 July 2009.

[3] *See* U.N. General Assembly Res. 68/235, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, 7 February 2014, A/RES/68/235.

[4] Report of the Secretary General on the situation concerning Western Sahara, 10 April 2014, S/2014/258, §43: "*Widespread contamination caused by landmines and explosive remnants of war throughout Western Sahara continues to endanger the lives of the local, nomadic and refugee populations, along with MINURSO military observers and logistical teams.*" In addition, Frente Polisario reported a significant loss of livestock to mines, especially in the buffer strip.

States Parties to the ICESCR recognize the right to work (Article 6) and commit to ensuring and implementing this right without any discrimination (Article 2.2). These provisions of the Covenant are far from respected in Western Sahara, where Sahrawis are underrepresented in almost every labor sector. including restaurant and retail services, the police force, education, and public administration in general.[5]

Right to education (Article 13)

The "right of everyone to education" enshrined in the Covenant is not fully respected in Western Sahara. Several observers report discriminatory practices so severe that they prevent Sahrawi students from receiving an adequate education. Discriminatory practices also hinder young Sahrawis' access to higher education. There is not a single university in the territory of Western Sahara and very few professional training programs are available.

Right to take part in cultural life (Article 15)

The Moroccan government exerts intense pressure on the content of Sahrawi cultural productions, leading to the censorship of Hassaniya culture. Moroccan authorities sometimes harass and arrest Sahrawi cultural figures. Furthermore, Morocco's restrictions on Sahrawi cultural life also take more indirect forms. Moroccan authorities sometimes prevent Sahrawi parents from registering the Hassaniya names they choose for their children, especially if they are hyphenated names common to Sahrawi culture,[6] or names the authorities believe have sovereignist connotations.[7] Finally, some Sahrawi individuals report that they have stopped wearing traditional clothing when they travel in Moroccan provinces because they fear harassment and threats.[8]

Obstacles to the Effective Implementation of the Rights Guaranteed by the ICESCR

Morocco systematically represses Sahrawi associations that defend their economic, social, and cultural rights, in particular those who advocate for the right to self-determination. Authorities refuse to accept the founding papers any Sahrawi association whose object is to defend the right to self-determination, thereby denying them legal status. Moreover, Morocco does not tolerate demonstrations supporting self-determination. In November 2010, Moroccan authorities violently dismantled the Gdeim Izik resistance camp formed by approximately 20,000 Sahrawi to defend their rights. Following these events, military courts tried and sentenced 25 protesters (including human rights defenders) to lengthy prison terms.

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was created to monitor the ceasefire between the parties and allow for a referendum on self-determination. Most peacekeeping missions' mandates include monitoring and protecting human rights.[9] Broadening MINURSO's mandate would enable impartial monitoring of the human rights situation in Western Sahara. It is essential for independent observers to observe and denounce rights violations suffered by the Sahrawi people and their human rights defenders.

We urge the Human Rights Council, its members, and observers to respond robustly to the human rights situation in the Western Sahara, including by:

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[5] Erica Vasquez, Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination, Georgetown Institute for Women, Peace and Security, November 2014.

[6] Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 77.

[7] Interview with Alice Wilson, Durham University, 10 November 2014.

[8] Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012,§75; Interview with Alice Wilson, Durham University, 10 November 2014.

[9] *See* http://pbpu.unlb.org/pbps/library/capstone_doctrine_eng.pdf. The Capstone doctrine, which aims to regulate the Peacekeeping Operations framework, states that as a matter of principle human rights law is inherently part of the objectives and principles defined in the United Nations Charter. In accordance with this doctrine, several current UN operations (MANUA, MINUK, MINUL, MINUSS, MONUSCO and ONUCI) include effective human rights protection mechanisms.

1. Appointing a Special Rapporteur to monitor the human rights situation in the non-self-governing territory of Western Sahara;

2. Calling upon the Security Council to strengthen the MINURSO mandate, so the mission can monitor human rights violations in the non-self-governing territory of Western Sahara.

3. Urging the Kingdom of Morocco to:

- Grant the Sahrawi people their right to self-determination, including a referendum in which they have the option to choose independence over self-autonomy;
- Dismantle the wall preventing free access by the Sahrawi people to their natural resources, and refrain from exploiting the territory's natural resources without seeking prior consent from the Sahrawi people's legitimate representatives;
- Ensure the Sahrawi people's right to work, education, and take part in cultural life; and
- Allow Sahrawi human rights defenders to defend their economic, social, and cultural rights, including their right to self-determination.

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* Action des chrétiens pour l'abolition de la torture - ACAT France, a NGO without consultative status also shares the views expressed in this statement.